

AMENDED IN SENATE APRIL 30, 2015

SENATE BILL

No. 507

Introduced by Senator Pavley

February 26, 2015

An act to amend Section 6603 of the Welfare and Institutions Code, relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

SB 507, as amended, Pavley. Sexually violent predators.

Existing law provides for the civil commitment of criminal offenders who have been determined to be sexually violent predators for treatment in a secure state hospital facility. Under existing law, persons to be evaluated for civil commitment are evaluated by 2 practicing psychiatrists or psychologists designated by the Director of State Hospitals. If both evaluators concur that the person is likely to engage in acts of sexual violence without appropriate treatment and custody, the director is required to forward a request for a petition for commitment to the district attorney or county counsel, who may then file the petition with the court.

Under existing law, if one or more of the original evaluators is no longer available to testify for the petitioner in court proceedings, the attorney petitioning for commitment may request the department to perform replacement evaluations. These replacement evaluations include the review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated. Existing law requires that the department forward the replacement evaluations to the petitioning attorney and to the counsel for the person who is the subject of the commitment hearing.

~~This bill would provide that the attorneys in the civil commitment proceeding have the same access to medical and psychological records as the evaluators performing a replacement evaluation, and would direct the court to issue a subpoena or court order for those records upon request. require the evaluator performing an updated evaluation to include a statement listing the medical and psychological records reviewed by the evaluator, and would direct the court to issue a subpoena, upon the request of either party to the civil commitment proceeding, for a certified copy of these records. The bill would authorize the attorneys to use the records in the commitment proceeding, but would prohibit disclosure of the records for any other purpose. The bill would also prohibit the attorney petitioning for commitment from providing access to these records to any 3rd party, including an expert retained or sought to be retained by that attorney, without the consent of the court upon noticed motion.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6603 of the Welfare and Institutions Code
2 is amended to read:
3 6603. (a) A person subject to this article shall be entitled to a
4 trial by jury, to the assistance of counsel, to the right to retain
5 experts or professional persons to perform an examination on his
6 or her behalf, and to have access to all relevant medical and
7 psychological records and reports. In the case of a person who is
8 indigent, the court shall appoint counsel to assist him or her, and,
9 upon the person's request, assist the person in obtaining an expert
10 or professional person to perform an examination or participate in
11 the trial on the person's behalf. Any right that may exist under this
12 section to request DNA testing on prior cases shall be made in
13 conformity with Section 1405 of the Penal Code.
14 (b) The attorney petitioning for commitment under this article
15 shall have the right to demand that the trial be before a jury.
16 (c) (1) If the attorney petitioning for commitment under this
17 article determines that updated evaluations are necessary in order
18 to properly present the case for commitment, the attorney may
19 request the State Department of State Hospitals to perform updated
20 evaluations. If one or more of the original evaluators is no longer

1 available to testify for the petitioner in court proceedings, the
2 attorney petitioning for commitment under this article may request
3 the State Department of State Hospitals to perform replacement
4 evaluations. When a request is made for updated or replacement
5 evaluations, the State Department of State Hospitals shall perform
6 the requested evaluations and forward them to the petitioning
7 attorney and to the counsel for the person subject to this article.
8 However, updated or replacement evaluations shall not be
9 performed except as necessary to update one or more of the original
10 evaluations or to replace the evaluation of an evaluator who is no
11 longer available to testify for the petitioner in court proceedings.
12 These updated or replacement evaluations shall include review of
13 available medical and psychological records, including treatment
14 records, consultation with current treating clinicians, and interviews
15 of the person being evaluated, either voluntarily or by court order.
16 If an updated or replacement evaluation results in a split opinion
17 as to whether the person subject to this article meets the criteria
18 for commitment, the State Department of State Hospitals shall
19 conduct two additional evaluations in accordance with subdivision
20 (f) of Section 6601.

21 (2) For purposes of this subdivision, “no longer available to
22 testify for the petitioner in court proceedings” means that the
23 evaluator is no longer authorized by the Director of State Hospitals
24 to perform evaluations regarding sexually violent predators as a
25 result of any of the following:

26 (A) The evaluator has failed to adhere to the protocol of the
27 State Department of State Hospitals.

28 (B) The evaluator’s license has been suspended or revoked.

29 (C) The evaluator is unavailable pursuant to Section 240 of the
30 Evidence Code.

31 (D) The independent professional or state employee who has
32 served as the evaluator has resigned or retired and has not entered
33 into a new contract to continue as an evaluator in the case, unless
34 this evaluator, in his or her most recent evaluation of the person
35 subject to this article, opined that the person subject to this article
36 does not meet the criteria for commitment.

37 (d) Nothing in this section shall prevent the defense from
38 presenting otherwise relevant and admissible evidence.

(e) If the person subject to this article or the petitioning attorney does not demand a jury trial, the trial shall be before the court without a jury.

(f) A unanimous verdict shall be required in any jury trial.

(g) The court shall notify the State Department of State Hospitals of the outcome of the trial by forwarding to the department a copy of the minute order of the court within 72 hours of the decision.

(h) Nothing in this section shall limit any legal or equitable right that a person may have to request DNA testing.

(i) Nothing in subparagraph (D) of paragraph (2) of subdivision (c) shall be construed to affect the authority of the State Department of State Hospitals to conduct two additional evaluations when an updated or replacement evaluation results in a split opinion.

(j) *(1) Notwithstanding any other law, the attorney petitioning for commitment and the counsel for the person subject to this article shall have the same access to records as an evaluator pursuant to paragraph (1) of subdivision (c), and the court shall issue a subpoena or court order for those records upon request. the evaluator performing an updated evaluation shall include with the evaluation a statement listing all records reviewed by the evaluator pursuant to subdivision (c). The court shall issue a subpoena, upon the request of either party, for a certified copy of these records. The records shall be provided to the attorney petitioning for commitment and the counsel for the person subject to this article. The attorneys may use the records in proceedings under this article and shall not disclose them for any other purpose. The records are confidential to the extent otherwise provided by law.*

(2) This subdivision does not affect any right of a party to object to the introduction of evidence that is more prejudicial than probative.

(3) This subdivision does not create any new rights or limitations regarding the retention of an expert witness by either party or access to records by an expert retained or sought to be retained by either party. The attorney petitioning for commitment shall not provide access to the records obtained under paragraph (1) to any third party, including an expert retained or sought to be retained by that attorney, without the consent of the court upon noticed motion.

1 (4) *This subdivision does not affect any right of a party to seek*
2 *to obtain other records regarding the person subject to this article.*
3 (5) *Except as provided in paragraph (1), this subdivision does*
4 *not affect any right of a committed person to assert that records*
5 *are confidential under Section 5328 of this code or Section 1014*
6 *of the Evidence Code.*

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